IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

R.S.A. No. 587 of 2005
Date of decision: February 15,2007

Charan Singh V. Gurmit Singh

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri Rakesh Kumar, Advocate, for the appellant.
Shri Ramesh Sharma, Advocate, for the respondent.

Viney Mittal,J.

The present second appeal has been preferred by the defendant who has lost concurrently before the two courts below, in a suit for specific performance filed by the plaintiff.

The plaintiff filed the aforesaid suit for specific performance of the agreement dated March 13,1997 by pleading that Charan Singh, defendant, was the owner of the property in question and had agreed to sell the same to him vide the aforesaid agreement for an amount of Rs.40,000/-. The plaintiff maintained that Rs.5,000/- was paid as earnest money and the sale deed was to be executed on or before January 15,1998. It was further claimed by the plaintiff that he was always ready and willing to perform his part of the agreement but the defendant had not executed the sale deed.

The suit was contested by the defendant. He denied the execution of the agreement by him and also claimed that no earnest money had ever been received by him. By way of a preliminary objection, a plea was also raised by him that the agreement in question was vague and uncertain and as such could not be specifically enforced.

Learned trial court decreed the suit filed by the plaintiff.

It was held that the agreement in question was duly executed by the defendant in favour of the plaintiff and at the time of the execution of the agreement, defendant had received Rs.5,000/- as earnest money also. It was held that plaintiff was always ready and willing to perform his part of the agreement. The plea of any vagueness or uncertainty was also rejected by the trial court.

The defendant took up the matter in appeal. The entire evidence was re-examined by the first appellate court. The argument raised on behalf of the defendant that the agreement was vague and uncertain was also examined but the appellate court rejected all the pleas raise by the defendant.

It was noticed that the defendant while appearing as a witness during his cross-examination had admitted that he had purchased the plot in question from Didar Singh and Mukhtiar Singh on May 22,1992 through a sale deed Ex.PA for a sum of Rs.5,000/- and had further admitted that he had agreed to sell the same to the plaintiff. The appellate court also noticed that defendant had admitted that the sale to Gurmit Singh, plaintiff, was to be in the same condition in which the defendant had purchased the same vide sale deed dated May 22,1992, Ex.PA. Consequently, it was held that there was no ambiguity and uncertainty in the agreement in question since the property which had been purchased by the defendant through the sale deed Ex.PA had been agreed to be sold by him to the plaintiff through the agreement Ex.P1. Consequently the appeal filed by the defendant was also dismissed by the appellate court.

I have heard Shri Rakesh Kumar, learned counsel appearing for the plaintiff and Shri Ramesh Sharma, learned counsel appearing for the respondent and with their assistance have also

gone through the record of the case.

Shri Rakesh Kumar learned counsel appearing for the appellant has argued that the agreement in question was totally vague and uncertain and,therefore, the same could not be specifically enforced.

I have duly considered the aforesaid argument of the learned counsel but find no force in the same.

I have perused the written statement field by the defendant, which has been produced before me for my perusal by the learned counsel. In the said written statement, the defendant has chosen to deny the execution of any agreement by him in favour of the plaintiff and has denied the receipt of any earnest money. Although in the preliminary objection, it has been stated by him that the agreement in question is vague and uncertain and cannot be specifically enforced, however, since during his cross-examination, the defendant has admitted that the property in question was purchased by him from Didar Singh and Mukhtiar Singh through sale deed Ex.PA and he has further admitted that he had agreed to sell the said property, purchased by him through sale deed Ex.PA, in favour of the plaintiff, therefore, there is no question of any uncertainty or vagueness with regard to the suit property. Moreover, when the due execution of the agreement has been upheld by the two courts below and the defendant has been found to be not taking a truthful stand in the written statement, then his plea with regard to any uncertainty or vagueness can also not be believed.

Nothing has been shown that the findings recorded by the two Courts below suffer from any infirmity or are contrary to the record.

Consequently, I do not find any merit in the present

appeal

Dismissed.

Before parting with this order, It may be relevant to state that in terms of the direction dated August 31,2006, the appellant was required to deposit an amount of Rs.50,000/-. If any such amount has been deposited by the appellant, then in view of the dismissal of the present appeal, he would be entitled to the refund of the same.

February 15,2007 (Viney Mittal)
sks Judge